

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Inquiry into)	MB Docket No. 04-210
Over-the-Air Broadcast)	
Television Viewers)	

**REPLY COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, hereby submits its reply comments in response to the Media Bureau’s (“Bureau”) Public Notice in the above-captioned proceeding. Among other things, the Public Notice seeks suggestions on how to “minimize the disruption to consumers when the switch-over to digital broadcasting occurs.”¹

The timing of that switch-over hinges on 85 percent of the households in a market having access to digital broadcasting. The Bureau has put forth a proposal intended to expedite the switch-over and provide a target date of 2009 for its completion.² Whatever the ultimate date, the cable industry has not been and will not be an impediment to the government’s goal of obtaining return of the billions of dollars worth of spectrum loaned to the broadcasters.

¹ Public Notice, “Media Bureau Seeks Comment on Over-the-Air Broadcast Television Viewers” (released May 27, 2004) at 1.

² See Written Statement of W. Kenneth Ferree, Chief, Media Bureau, FCC on “Completing the Digital Television Transition,” Committee on Commerce, Science and Transportation, U.S. Senate (June 9, 2004).

1. Cable Carriage of Digital Broadcast Signals is Not a Solution to the Transition

The cable industry already has made a massive investment in digital technology and infrastructure improvements. In late 2002, it completed a landmark agreement with the consumer electronics industry on plug-and-play digital television sets. And operators over the last year throughout the country have rapidly rolled out high-definition (“HD”) digital broadcast and non-broadcast services in addition to their existing tiers of standard definition digital programming.

Given this enormous investment in infrastructure and programming over the last several years, it is not surprising that, as the New America Foundation’s Comments explain, “[a] DTV transition is happening – but it is occurring almost entirely via satellite and cable subscription services [T]he cable and satellite TV industries are making the DTV transition far faster than the broadcast industries – despite the lack of government subsidies.”³

Some broadcasters in this proceeding, however, persist in suggesting that it is cable that is somehow lagging behind and that without forced cable carriage of all multicast digital broadcast signals, the transition’s completion is slowed. But these arguments have no logical basis. First, contrary to the suggestions of some broadcast commenters,⁴ the panoply of broadcast and non-broadcast HD programming already available on cable provides cable customers with ample reason to buy new HD sets, should they be so inclined. The HD pump is primed. Even if operators do not carry every digital station in the market, customers can still access those signals over the air, and the DTV tuner obligation ensures that cable customers can

³ Comments of The New America Foundation, Attachment at 3.

⁴ Comments of NAB/MSTV at 10; *id.* at 7 (claiming that “cable systems not carrying all DTV broadcast signals remains a disincentive to consumers’ investing in DTV, knowing they won’t necessarily receive all of the digital stations available in their markets.”)

still view those signals on their HD sets. Indeed, according to recent statements by one broadcaster, improved receiver technology “allow[s] consumers to easily receive free digital television broadcasts in their homes. Broadcasters and consumers can now look forward to a robust DTV service delivered over-the-air without having to subscribe to cable or satellite.”⁵

Second, notwithstanding the comments of Paxson Communications Corporation, mandatory multicast must carry provides no inducement for cable customers to buy DTV sets or become digital tier cable customers.⁶ But most relevant to this proceeding, even if cable operators were to carry Paxson’s multicast signals, Paxson’s multicasting would provide no stimulus to over-the-air viewers to buy new DTV sets or digital-to- analog converters, either.

The issue as to over-the-air viewers is a low cost converter box, not creating must-carry clutter for cable subscribers. Comments of some equipment retailers show that “technologically, there is no necessity today for digital to analog over-the-air converter boxes and hence there is only a very small market for the product. Without a date certain when the transition will be completed, it is unclear at what pace that product’s presence will grow and at what price they will be offered.” Motorola, an equipment manufacturer, shows why converter prices will remain high:

Typically, those consumers that rely on over-the-air transmissions for television reception, especially low-income households, are not driving this growth [in digital equipment purchases.] What is required for the wider consumer market is a low cost device that will allow TV viewers to continue to use their existing televisions. Under the provisions of the current law with respect to the DTV

⁵ Sinclair Broadcasting Group, Inc., Press Release, “SBG Pleased with DTV Receivers” (June 8, 2004). See also id., “PSAs Raise Free Over The Air HDTV Awareness,” (Aug. 26, 2004) (“Sinclair wants to raise awareness among consumers and retailers that they don’t need expensive cable or satellite hookups to watch the Super Bowl, World Series, or the latest network drama or comedy in HDTV.”)

⁶ Comments of Paxson Communications Corp. at 9. According to Paxson, “the Commission should stop pursuing diversions like the identity of those elusive over-the-air broadcast viewers and instead concentrate on using the tools Congress gave it to complete the DTV transition. At this point the last and most important tool the Commission has is full digital multicast must-carry.”

transition, there is currently no demand for such a mass-market product because of the uncertainty created by the 85% penetration loophole. If a more certain deadline for the DTV transition were established, there will be a clear market for low cost converter boxes and manufacturers will have incentives to produce them in quantities that drive down costs.⁷

Even if cable were to carry multicast digital streams under an erroneous reading of the statute, it would not prime the pump for over-the-air viewers. There is no evidence from Paxson or others that over-the-air viewers will likely invest in expensive digital-to-analog converter boxes simply to gain access to multiple streams of programming from lightly-viewed must carry stations.⁸

The key to bringing the broadcasters' digital transition to a close is not cable carriage of digital must carry multicast signals but assurance that analog-only over-the-air viewers can continue to receive any television programming at all. At a minimum, that requires the development and distribution of low-cost digital-to-analog converter devices for over-the-air viewers.⁹ Cable operators and equipment suppliers are actively researching the development of a relatively inexpensive device that will enable cable customers to continue to use analog television sets hooked up to their cable system to access digital programming.¹⁰ But the comments of certain broadcasters exhibit a curious disinterest in stepping up to the plate to help develop a relatively inexpensive means for over-the-air viewers to continue to receive any television at all after the analog switch-off.

⁷ Comments of Motorola at 6-7.

⁸ Indeed, Paxson now demands that "the Commission must recognize the centrality of DTV multicasting to a successful DTV transition and then use whatever regulatory tools are available to encourage as many broadcasters as possible to multicast." Paxson Comments at 6.

⁹ See, e.g., Comments of Motorola at 6; Comments of LG Electronics U.S.A., Inc. at 3.

¹⁰ See Multichannel News, "Coming Soon: The \$50 Digital Set-Top: Comcast's Fellows, Others Say Less Pricey Chipsets Are Already on the Way," (July 26, 2004).

Notably, as has been the case throughout the Commission's DTV proceedings, the NAB/MSTV joint comments point to retailers, set manufacturers, auction winners, the cable industry and the government as bearing some measure of responsibility for assisting in the transition's end.¹¹ The broadcaster associations offer no suggestions about how they might help ease the burden for their over-the-air audience. They simply propose that "to the extent that the government wishes to change course from a market-penetration end to the DTV transition, it can and should embark on a campaign to drive down the costs of digital converters for the benefit of all analog sets, as well as for OTA-only households."¹²

Developing low-cost converter devices for over-the-air viewers is the critical first step toward ensuring a smoother end to analog broadcasting. But some commenting parties suggest that it may not be enough and that even once those devices have been developed and mass produced, additional government subsidies may be needed to minimize the potential for consumer disruption.

To the extent that the government determines that it should subsidize the transition, we agree with those commenters who propose that those subsidies should be technology neutral. Whatever criteria are used to determine eligibility should not discriminate against those who opt for multichannel video programming distributors as a means of obtaining their digital broadcast service.

¹¹ See Comments of NAB/MSTV at 7 (urging more ubiquitous cable carriage); id. at 8 (urging better HD demonstrations in retail stores); id. at 9 (suggesting warning labels on analog sets and urging expedited roll-out of integrated DTV tuner); id. at 11 (proposing that auction winners pay into fund to support the transition).

¹² Id. at 15.

Commenters have proposed several different forms for that subsidy. Some have proposed subsidizing the cost of cable for non-subscribers.¹³ Others have proposed extending any tax credit to all households, including cable households.¹⁴ Any subsidies should be technology neutral and should not disadvantage those viewers who wish to either become a new cable (or other MVPD) customer or connect additional analog television sets to cable.¹⁵

In any event, whether subsidized or not, technology for receiving and viewing digital signals over-the-air is the key to ending the transition and recovering the broadcaster's analog spectrum.

2. Cable Operators Should Have Flexibility to Provide Digital Broadcast Signals In a Manner that Best Serves Their Customers

Even in the face of cable's roll-out of attractive digital offerings, a large number of cable customers have not yet chosen to subscribe to digital, let alone HD. Today, 30 percent of cable homes – 23 million cable households – opt for a digital tier of service. By the end of 2008, nearly 41 million cable subscribers are projected to be digital cable subscribers.¹⁶ That still leaves nearly 30 million cable households that are projected to subscribe to only analog cable

¹³ See, e.g., Comments of Entravision at 8 (proposing “subsidizing ... the provision of free basic cable or satellite service to current over-the-air viewers.”); Comments of the Minority Media and Telecommunications Council at 5 (“vouchers [should] be available not only for converter boxes, but also to partly subsidize the cost of DTV sets and multichannel video. In this way, the voucher program would not unintentionally contribute to a two-tier system of television delivery, in which multichannel video is for the wealthy and middle class, and minimal service is for the poor;”) Comments of the 700 MHz Advancement Coalition Regarding the Over-the-Air Broadcast Television Viewers at 2 (suggesting that “any support [from future auction revenues] should apply to a variety of choices that may be offered to the consumer, including but not limited to defraying the purchase of a digital-to-analog converter or defraying the cost of cable installation.”)

¹⁴ See, e.g., Comments of New America Foundation at Attachment p. 7 (proposing to “[p]ermit all TV households to claim a single credit for the purchase of qualifying DTV equipment.”)

¹⁵ CEA's comments, for example, show that nearly a third of cable and/or DBS homes have at least one television set not connected to the subscription service. Comments at CEA at 4. NAB/MSTV's survey shows 28 million unwired analog sets in cable or satellite homes. Comments at NAB/MSTV at 2. These analog sets will also lose service unless set owners take some step to continue to get a picture.

¹⁶ Kagan Research LLC projections.

service four years hence.¹⁷ Even digital tier households that opt to connect a digital-to-analog converter to one or more analog sets still rely on analog-only viewing for some of their sets and are expected to continue to do so. Kagan estimates suggest that there will be 30 million analog television sets in these digital cable homes at the end of 2008.¹⁸ Added to the roughly 78 million analog television sets in analog-only cable homes, in total, more than 100 million analog television sets will be found in cable customers' homes at the end of 2008.

In some cases, cable operators may decide to convert a particular system to "all digital" and may determine that providing low-cost digital-to-analog converter devices to each customer for each analog set is the best way to offer digital programming. But other operators may decide to take a different route and continue to serve analog sets that are hooked up to their systems – even if broadcasters transmit only digital signals over-the-air – without the need for set-top boxes. This can be achieved through converting that digital signal to analog at the system's headend. Conversion to analog at the headend will relieve cable customers of the need to obtain boxes for every television set in their homes.¹⁹

In order to ensure a smooth transition for cable customers, cable operators must have the flexibility to make the transition in a way that best responds to the needs of their customers. Broadcasters should not be granted rights to dictate how the transition occurs for cable subscribers.²⁰

¹⁷ Id.

¹⁸ Id.

¹⁹ Even if a low-cost device were developed for cable along the lines of the \$67 device for over-the-air viewers that Motorola cites in its comments (Comments of Motorola at 7), this would mean more than a \$7 billion price tag to equip each analog television set in cable customers' homes to receive digital signals.

²⁰ The Media Bureau's transition plan proposes that, after the analog spectrum has been returned, a digital-only must carry broadcaster could choose either digital or analog cable carriage. NCTA believes that that choice properly resides with the cable operator, given its interest in best serving its customers. APTS in its Comments, though, proposes even more flexibility for broadcasters than the Media Bureau's overly-generous plan, arguing

CONCLUSION

The cable industry stands ready to ensure that the digital transition takes place with the minimum of disruption to its customers. But that can only occur if the FCC resists the demands of certain broadcasters in this proceeding and others to dictate how cable operators accomplish the transition for their customers.

Respectfully submitted,

/s/ Daniel L. Brenner

Daniel L. Brenner
Diane B. Burstein
Counsel for the National Cable &
Telecommunications Association
1724 Massachusetts Avenue, NW
Washington, DC 20036-1903

September 7, 2004

that broadcasters should be able to pick both analog down conversion and digital tier carriage of all its digital signals. Comments of APTS at 21. APTS' proposal amounts to dual carriage after the digital transition – a policy equally invalid, as a matter of law and policy, as a dual carriage requirement before the transition. Cable operators have limited bandwidth and must be able to put that bandwidth to the best use for its customers.